



THE EMPLOYMENT TRIBUNAL

SITTING AT: LONDON SOUTH

BEFORE: EMPLOYMENT JUDGE TRUSCOTT QC

BETWEEN:

Miss M Jablonska

Claimant

AND

Michal Nosek t/a Freedom Construction

Respondent

ON: 25 June 2019

Appearances:

For the Claimants: In person

For the Respondent: No appearance or representation

JUDGMENT

1. It is declared that the respondent has failed to provide the claimant with itemised pay statements when she was paid. No financial award is made in respect of the failures.

2. The claimant's pay statements should have contained the following particulars:

- a. Gross hourly rate
- b. Hours per week
- c. Gross weekly pay
- d. Net weekly pay
- e. No fixed deductions.

REASONS

1. The claimant was employed by the respondent from 2 May 2017 until 23 February 2018. The employer made deductions for tax and national insurance but has never said what they amounted to nor has he accounted to HMRC with the deductions.

2. Principally, the claimant seeks to have her period of employment and deductions recorded with HMRC. She does not seek a financial award.

3. She received the following payments:

week 1. 32h x £6,50 -(tax)= 173.33

week 2. 40h x £6,50 - (tax)= 216.67

week 3.40h x £7.05 - (tax)= 235.00

week 4 .40h x £7.05 - (tax)= 235.00

week 5. 27.75h x £7.05 - (tax)=163.03

week 6. 39h x £7.05 - (tax) = 229.13

week 7 .40h x £7.05 - (tax)= 235.00

week 8. 12h x 7.05- (tax) =70.50

week9. 0h

week 10 .40h x £7.05 - (tax)= 235.00

week 11. 32h x £7.05 - (tax)= 188.00

week 12 .40h x £7.05 - (tax)= 235.00

week 13 .41h x £7.05 - (tax)= 240.88

week 14. 39h x £ 7.05 - (tax) = 229.13

week 15 .40h x £7.05 - (tax)= 235.00

week 16. 27.75h x £7.05 - (tax) = 163.03

week17. 32h x £7.05 - (tax) = 188.00

week 18. 32.5 x £7.05 - (tax) = 190.94

week 19. 32h x £7.05 - (tax) = 188.00

week20. 32h x £7.05 - (tax) = £188.00

week 21. 40 x £7.05 - (tax) = £235.00

week 22. 39.5 x £7.05 - (tax) = 232.06

week 23. $40h \times £7.05 - (\text{tax}) = 235.00$
 week 24. $38.5 \times £7.35 - (\text{tax}) = 235.81$
 week 25. $40h \times £7.35 - (\text{tax}) = 245.00$
 week 26. $40h \times £7.35 - (\text{tax}) = 245.00$
 week 27. $40h \times £7.35 - (\text{tax}) = 245.00$
 week 28. $40h \times £7.35 - (\text{tax}) = 245.00$
 week 29. $38.75h \times £7.35 - (\text{tax}) = £237.34$
 week30. $40h \times £7.35 - (\text{tax}) = 245.00$
 week31. $40.25h \times £7.35 - (\text{tax}) = £246.53$
 week32. $40.25h \times £7.35 - (\text{tax}) = £246.53$
 week 33. $39h \times £7.35 - (\text{tax}) = £238.88$
 week34. $38h \times £7.35 - (\text{tax}) = £232.75$
 week35. $38h \times £7.35 - (\text{tax}) = £232.75$
 week 1. $38h \times £7.35 - (\text{tax}) = £232.75$
 week2. $24.5h \times £7.35 - (\text{tax}) = £150.06$
 week3. $42h \times £7.35 - (\text{tax}) = 257.75$
 week4. $41.75h \times £7.35 - (\text{tax}) = 255.72$
 week 5. $24.5h \times £7.35 - (\text{tax}) = £150.06$
 week6. $41h \times £7.35 - (\text{tax}) = 251.13$
 week 7. $40h \times £7.35 - (\text{tax}) = 245.00$
 week 8 = $40h \times £7.35 - (\text{tax}) = 248.06$ (notice period)

4. Section 8(1) of the Employment Rights Act 1996 gives the right to an employee every time he is paid his wages or salary, to receive a written statement giving the breakdown of the amount paid to him. The right to receive an itemised pay statement is an absolute one and is not conditional upon an employee requesting such a statement (**Coales v. John Wood & Co (Solicitors)** [1986] ICR 71, EAT). As HHJ David Richardson put it in **Ridge v. HM Land Registry** UAEAT/0098/10 (23 September 2014, unreported):

‘The purpose of an itemised pay statement is, I think, clear enough. It is to enable an employee receiving a payment of wages or salary to see, at a glance and in broad outline, how that payment is made up. In order to do so, deductions must be identified and explained. Hidden and unexplained deductions are not permitted.’

5. If the statement is provided any later than pay day, the employer will be in breach. This is illustrated by **Cambiero v. Aldo Zilli & Sheenwark Ltd** EAT/273/96 (9 July 1997, unreported), where the employer failed to provide any pay slips during the claimant's employment but then supplied most of them some six weeks after the employment terminated. Although the pay slips were late it was not disputed that they set out accurately the claimant's gross pay, appropriate deductions for income tax and National Insurance contributions and net pay. Nonetheless, there was still a breach of section 8. As Judge Peter Clark put it: 'The breach lies in not notifying the employee of the deductions when they are made' (emphasis added). As a consequence, an employer will contravene section 8 if, for example, he pays his employees weekly but only provides an itemised pay statement at the end of the month.

6. Where the employer fails to give a pay statement or gives one that does not provide the required information, an aggrieved employee can refer the question to an employment tribunal to determine what the statement should have contained (ERA 1996 s 11(1)). However, it is important to note that the right to an itemised pay statement is concerned only with whether deductions have been properly notified.

7. The remedies available on a reference under section 11 are set out in sections 12(3)–(5) ERA 1996. Firstly, if the employer has failed to provide a pay statement or if the pay statement or standing statement does not contain the required information, then the tribunal must make a declaration to that effect (s 12(3)). This is the case even if the breach is purely technical, such as where the claimant has been given all the prescribed information orally rather than on their pay slip: see **Coales v. John Wood & Co**. Secondly, the tribunal may (but is not obliged to) make a financial award to the employee if any un-notified deductions have been made from his or her pay in the 13 weeks immediately preceding presentation of the claim (section 12(4)).

8. The Tribunal's power to make a financial award under section 12(4) ERA 1996 is unaffected by the fact that the un-notified deductions have been properly made. So even where deductions are made in accordance with the employee's contract or with the employer's statutory obligations, if they have not been notified in accordance section 8 ERA 1996, the tribunal may nonetheless make an award.

9. The Tribunal decided to make a declaration in favour of the claimant.

Employment Judge Truscott QC
Date 25 June 2019